

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2010-000839-001 DT

01/13/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

PAWN 1ST LLC
GUY DRYER

THOMAS M BAKER

v.

MARICOPA COUNTY SHERIFFS OFFICE
(001)
KEN HOLMES (001)
PAWN SHOP LICENSING AND
REGULATORY HEARING OFFICER (001)
CITY OF PHOENIX (001)

JONATHON SCOTT DUTCHER
SANDRA HUNTER

RECORD APPEAL RULING / REMAND

Plaintiff-Appellant Pawn First, LLC., asks this Court to review the Order of Suspension issued October 1, 2010. For the following reasons, this Court affirms that Order.

I. FACTUAL BACKGROUND.

On July 20, 2010, Frank G. Sweeney of the City of Phoenix Police Department Property Crimes Bureau requested Defendant-Appellee Maricopa County Sheriff's Office (MCSO) initiate a pawnbroker license suspension against Plaintiff-Appellant Pawn First, LLC. (Pawn 1st). On August 24, 2010, Captain Ken Holmes of the MCSO sent a letter to Guy Dryer saying the pawnbroker's license of Pawn 1st would be suspended and that Pawn 1st was entitled to a hearing, which was set for September 28, 2010.

At that hearing, Detective Bruce Greenberg testified he had been with the City of Phoenix Police Department for 16 years and was currently assigned to the pawn detail. (R.T. of Sep. 28, 2010, at 6.) He testified he conducted an inspection of Pawn 1st on April 20, 2010, and found two items of non-compliance, a DeWalt drill that had owner-applied information that was not reported on the ticket, and items of jewelry that were not properly described on the ticket. (*Id.* at 8–13.) He discussed these items with the manager, Rich Lenneti, who seemed to be disinterested. (*Id.* at 13.) On May 3, 2011, Det. Greenberg returned and gave Mr. Lenneti a copy of the report. (*Id.* at 13–15.)

On June 3, 2010, Det. Greenberg returned to do a re-inspection. (R.T. of Sep. 28, 2010, at 15.) This time he found a Mikita saw and a Hitachi drill with owner-applied information that was not reported on the ticket. (*Id.* at 17–19.) He found no problems with the jewelry tickets. (*Id.* at

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19.) Again he discussed these items with Mr. Lenneti, who seemed to be slightly more interested, but still not particularly interested. (*Id.* at 20–21.) Det. Greenberg told Mr. Lenneti they would be looking at a license suspension and prosecution. (*Id.* at 22.)

Mr. Dryer then questioned Ron Cantini about steps taken to correct the problems. (R.T. of Sep. 28, 2010, at 28–31.) Mr. Cantini was also cross-examined about training for Mr. Lenneti. (*Id.* at 35–36.) He was also questioned about the store’s computer system. (*Id.* at 36–40.) Mr. Dryer then testified about the procedures in the store. (*Id.* at 41–43.)

On October 1, 2010, Captain Holmes issued a Notice of Suspension Hearing Results wherein he found two violations of the pawnbrokers statutes, and that “there was no evidence provided by either [Mr. Dryer] or Mr. Cantini that procedures had been adopted to avoid reoccurring violations.” (Letter, dated Oct. 1, 2010, at (8), ¶ 4.) He further stated the second incident, which involved the Mikita saw and the Hitachi drill, showed “your Pawnshop has not maintained procedures reasonably adapted to avoid the occurrence of bona fide errors.” (*Id.* at (11).) Captain Holmes then issued a 2-day suspension to begin November 15, 2010. On October 29, 2010, Plaintiff filed a Complaint for Review of Administrative Decision. This Court has jurisdiction pursuant to A.R.S. § 12–124(A) and A.R.S. § 12–905(A).

II. GENERAL STANDARDS FOR REVIEW:

The Arizona statutory authority and case law define the scope of administrative review:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

A.R.S. § 12–910(E).

In reviewing an administrative agency’s decision, the superior court examines whether the agency’s action was arbitrary, capricious, or an abuse of discretion. The court must defer to the agency’s factual findings and affirm them if supported by substantial evidence. If an agency’s decision is supported by the record, substantial evidence exists to support the decision even if the record also supports a different conclusion.

Gaveck v. Arizona St. Bd. of Podiatry Exam., 222 Ariz. 433, 215 P.3d 1114, ¶ 11 (Ct. App. 2009) (citations omitted).

[I]n ruling on the sufficiency of the evidence in administrative proceedings, courts should show a certain degree of deference to the judgment of the agency based upon the accumulated experience and expertise of its members.

Croft v. Arizona St. Bd. of Dental Exam., 157 Ariz. 203, 208, 755 P.2d 1191, 1196 (Ct. App. 1988).

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A trial court may not function as a “super agency” and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.

DeGroot v. Arizona Racing Comm’n, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (Ct. App. 1984). The reviewing court must view the evidence in a light most favorable to upholding the agency’s decision and affirm that decision if it is supported by any reasonable interpretation of the record. *Baca v. Arizona D.E.S.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998). While the reviewing court is not bound by the agency’s conclusions of law or statutory interpretations, an agency’s interpretation of statutes or regulations that it implements is entitled to great weight. *Siegel v. Arizona St. Liq. Bd.*, 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (Ct. App. 1991); *Baca v. Arizona D.E.S.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998).

However, the agency’s interpretation is not infallible, and courts must remain final authority on critical questions of statutory construction.

U.S. Parking Systems v. City of Phoenix, 160 Ariz. 210, 211, 772 P.2d 33, 34 (Ct. App. 1989).

III. ISSUE: WAS THE ACTION OF THE AGENCY SUPPORTED BY SUBSTANTIAL EVIDENCE,
AND WAS IT CONTRARY TO LAW, ARBITRARY AND CAPRICIOUS, OR AN
ABUSE OF DISCRETION.

The Arizona statute provides a pawnbroker’s license will not be suspended if (1) the violation resulted from a bona fide error, and (2) the pawnshop maintains procedures reasonably adopted to avoid the occurrence of such bona fide errors. A.R.S. § 44–1628(A). Pawn 1st contends the hearing officer abused his discretion in finding Pawn 1st had not maintained procedures reasonably adapted to avoid the occurrence of bona fide errors. At the hearing below, there was conflicting testimony on that point. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to “look over the shoulder” of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves “an assessment of conflicting procedural, factual or equitable consid-

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erations which vary from case to case and which can be better determined or resolved by the [hearing officer]" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the [hearing officer]."

IV. CONCLUSION.

Based on the foregoing, this Court concludes the action of the agency was supported by substantial evidence, and was not contrary to law, arbitrary and capricious, or an abuse of discretion. This Court further determines there is no just reason to delay entry of judgment.

IT IS THEREFORE ORDERED affirming the Order of Suspension issued October 1, 2010.

IT IS FURTHER ORDERED remanding this matter to Maricopa County Sheriff's Office.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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